

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

No. 14-cv-1242 (RCL)

U.S. DEPARTMENT OF STATE,

Defendant.

**INTERVENOR HILLARY RODHAM CLINTON'S REPLY IN SUPPORT OF HER
OPPOSITION TO PLAINTIFF'S REQUEST FOR A DEPOSITION**

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INTRODUCTION

Discovery in FOIA cases is the exception, not the rule. And, as Judicial Watch has conceded, a deposition of a former Cabinet Secretary is even rarer, requiring a showing of “extraordinary circumstances.” *See Judicial Watch v. U.S. Dep’t of State*, Case No. 13-1363, 2016 WL 10770466, at *6 (D.D.C. Aug. 19, 2016). Judicial Watch has not made that showing. In fact, Judicial Watch’s response confirms the several shortcomings in its request to depose Secretary Hillary Rodham Clinton.

ARGUMENT

I. Secretary Clinton Does Not Have Discoverable Information Regarding the State Department’s Attempt to Settle This Case or Its FOIA Search.

Secretary Clinton’s opening brief showed that she had no discoverable information with respect to two of the three issues upon which this Court permitted discovery. Opp. (Dkt. 143) at 5–6. Secretary Clinton had absolutely no involvement in the State Department’s effort to settle this case or its search for documents in response to Judicial Watch’s FOIA request—both of which occurred after her tenure as Secretary. Judicial Watch has no basis for seeking discovery from Secretary Clinton on these subjects. In fact, in a meet-and-confer email sent after a meeting with the Justice Department on August 13, 2019, Judicial Watch essentially conceded as much, stating that “Plaintiff seeks Secretary Clinton’s deposition in regards to the first prong of the discovery permitted by the Court in its January 15, 2019 Order and FOIA processing in her office from Jan. 2009 to Jan. 2013.” Ex. A. Nowhere in that email did Judicial Watch claim that Secretary Clinton should be deposed on any other topics.

Judicial Watch has now taken a very different position in its Response. Despite what it said in its August 13 email, Judicial Watch now claims that “Secretary Clinton has discoverable information relating to all three topics of discovery.” Response (Dkt. 144) at 9. But Judicial Watch

does not, and cannot, back up that claim. Although it declares that Secretary Clinton was involved in State’s “attempt[] to settle this case with Judicial Watch,” *id.* at 10, that assertion is uncited, unsupported, and has no basis in fact. Judicial Watch has conducted broad discovery into State’s settlement efforts, and it offers no evidence to suggest that Secretary Clinton had any involvement of any kind as State was trying to settle with Judicial Watch. Judicial Watch’s bald assertion to the contrary does not constitute “extraordinary circumstances” justifying discovery from a former Cabinet Secretary. *See Judicial Watch*, 2016 WL 10770466 at *6.

II. Judicial Watch Is Not Entitled to Discovery about the Terrorist Attack in Benghazi.

Secretary Clinton’s opening brief also established that Judicial Watch was improperly trying to expand the scope of discovery to include the events underlying the substance of its FOIA request. In other words, Judicial Watch is trying to use discovery in this FOIA litigation to conduct its own investigation into the American response to the terrorist attacks in Benghazi. Judicial Watch’s response is remarkably candid about that: Judicial Watch wants to probe “what [Secretary Clinton] and State were trying to hide from public release prior to Ambassador Susan Rice’s television appearances on September 16, 2012.” Response at 10. This topic has nothing to do with any of the three permitted topics of discovery, and it is nothing more than an attempt to obtain discovery about the substance of the matter which generated FOIA-able documents—something that no court has ever permitted.¹ Indeed, Judicial Watch does not cite a single legal authority in support of this argument. And for good reason: the scope of discovery only extends to information that is “relevant to [a] party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). In FOIA cases, the

¹ Judicial Watch also claims that it needs to depose Secretary Clinton about “who she communicated with . . . about the Benghazi attacks.” Response at 10. Again, it cites no authority permitting such discovery in a FOIA case. In any event, Judicial Watch already has Secretary Clinton’s emails from this time period. There is nothing more to learn about “who she communicated with.”

parties' claims and defenses all relate to whether "the defendant . . . has fully discharged its obligations under [FOIA]." *Reliant Energy Power Generation, Inc. v. F.E.R.C.*, 520 F. Supp. 2d 194, 200 (D.D.C. 2007). Judicial Watch's desire to learn what the government was supposedly "trying to hide" in Benghazi's aftermath has nothing to do with State's compliance with FOIA.

III. Secretary Clinton Has Already Addressed the Issue of Whether She "Intentionally Attempted to Evade FOIA" in Sworn Discovery Provided to Judicial Watch and in Other Public Statements.

As set forth in Secretary Clinton's opening brief, Judicial Watch, in a related FOIA case (*Judicial Watch v. Department of State*, 13-1363 (D.D.C.)), already took the very discovery from Secretary Clinton that it again seeks in this case. It also has access to an extensive public record on the issue of Secretary Clinton's intent in using private email. Judicial Watch cannot show "extraordinary circumstances" justifying any further discovery from a former Cabinet Secretary in light of the previously obtained discovery and the public record, let alone a need for a deposition. *See Opp.* at 12.

Judicial Watch offers essentially three arguments in response. First, it argues that interrogatories are "inefficient and inadequate" because the "scope of discovery permitted in this case covers broader subject matters than the preceding litigation before Judge Sullivan." Response at 2. Second, it claims that it needs the "ability to ask follow-up questions" in a deposition. *Id.* at 2. Third, it argues that the deposition of Tasha Thian constitutes new information justifying a deposition. *Id.* at 2–7. These arguments all fail.

The scope of discovery: Judicial Watch is just wrong as to the scope of discovery. As it pertains to Secretary Clinton, the scope of discovery in this case and the case before Judge Sullivan is identical. In both cases, the sole issue relevant to Secretary Clinton is her intent in using private

email. Opp. at 2–3. Although this Court permitted discovery on two other issues, Secretary Clinton has no knowledge about those issues, as they relate to events that took place after she left the State Department. *See supra* pp. 1–2.

The need for “follow-up” questions: Judicial Watch argues that interrogatories are an inadequate discovery device because it needs to ask follow-up questions regarding Secretary Clinton’s intent in using private email. This is not a credible argument. Judicial Watch has already “acknowledge[d] that questions regarding Secretary Clinton’s motivation for using the system throughout her tenure as Secretary of State could be responded to through interrogatories.” *Judicial Watch*, 2016 WL 10770466 at *6. And Judicial Watch’s conduct in the prior FOIA case shows that it has no legitimate need to ask “follow-up” questions: Judge Sullivan expressly invited Judicial Watch to seek leave to serve additional interrogatories if it needed to ask any follow-up questions—but Judicial Watch never did so. *Id.* Nor did Judicial Watch ever complain to Judge Sullivan that Secretary Clinton’s answers were in need of clarification.² Even if Judicial Watch could show that it needed more discovery—and it cannot—Judicial Watch’s prior concessions and the history before Judge Sullivan confirm that interrogatories are an appropriate discovery device.

Throughout its brief, Judicial Watch attempts to walk back this history by giving examples of the types of “follow-up” questions that it would ask at a deposition—an exercise that itself shows that Judicial Watch is capable of propounding its questions in writing. Beyond that, looking

² Judicial Watch claims that Secretary Clinton’s argument on this issue is “misleading” because she “answered certain questions only after Plaintiff was forced to move to compel.” Response at 2. The only “misleading” argument is that of Judicial Watch. As Secretary Clinton explained in her opposition, she initially objected to three interrogatories based on relevance and privilege grounds, and refused to answer those questions in their entirety. Opp. at 3. Judge Sullivan overruled her objections on two of the three interrogatories, and Secretary Clinton provided answers to those two interrogatories. Opp., Ex. B. Secretary Clinton provided answers to 24 of Judicial Watch’s interrogatories, and Judicial Watch *never* sought leave to ask any clarifying follow-up questions and *never* challenged the adequacy or completeness of any of her responses.

at the purported “follow-up” questions themselves, it is clear that Judicial Watch already has the answers it supposedly needs. For example, Judicial Watch claims to be confused by what Secretary Clinton means when she says that she used private email for the sake of convenience. Response at 3. But Secretary Clinton has repeatedly explained that she “believed that it would be more convenient to use one electronic device (rather than two).”³ Opp. at 1. Many of Judicial Watch’s other “follow-up” questions have similarly been answered. For example, Judicial Watch claims that “Secretary Clinton’s actual understanding of her obligations with respect to official State Department records is completely absent from the record.” Response at 5. But Judicial Watch specifically asked Secretary Clinton about “federal recordkeeping laws” in its interrogatories. Opp., Ex. A at 6–8 (interrogatories 6–10). Secretary Clinton answered those questions to the best of her knowledge—including by confirming that she “understood that e-mail she sent or received in the course of conducting official State Department business was subject to FOIA.” Opp., Ex. A at 8. Judicial Watch never sought leave to ask any follow-up questions and never raised any issues with Judge Sullivan about the adequacy of those answers.

In any event, the outcome here does not depend on whether Judicial Watch can come up with new questions that it would like to ask at a deposition. Instead, the issue is whether Judicial

³ Opp., Ex. C at 4 (“CLINTON was not issued a mobile device by State, but continued to use the password protected BlackBerry she used during her time in the Senate. This device was connected to her AT&T BlackBerry address which was used for both personal communications and official business. CLINTON made this decision out of convenience”); Opp., Ex. F at 292–93 (“It was not until about 2006 that I began sending and receiving emails on a BlackBerry phone. I had a plain old AT&T account like millions of other people, and used it both for work and personal email. That was my system, and it worked for me. Adding another email account when I became Secretary of State would have meant juggling a second phone, since both accounts could not be on the same State Department device.”); Opp., Ex. H at 3–4 (“First, when I got to work as secretary of state, I opted for convenience to use my personal email account, which was allowed by the State Department, because I thought it would be easier to carry just one device for my work and for my personal emails instead of two.”).

Watch can show “extraordinary circumstances” justifying a deposition of a former Cabinet Secretary. *Judicial Watch*, 2016 WL 10770466 at *6. Judicial Watch cannot make that showing: Secretary Clinton has already answered its “follow-up” questions in the previously answered interrogatories and elsewhere, and the remaining questions address technical details about which Secretary Clinton is unlikely to have any knowledge (like the State Department’s email retention process). *See, e.g.*, Response at 6. But even if Judicial Watch’s newfound “follow-up” questions could somehow warrant more discovery, it should be in the form of targeted interrogatories, for the reasons discussed above and in Secretary Clinton’s opening brief.

The deposition of Tasha Thian: Finally, the selected excerpts of the deposition of Tasha Thian, a former State Department records officer, afford no justification for a deposition of the former Secretary. A review of Ms. Thian’s entire deposition reveals that she left the State Department in June 2014 (Ex. B at 13), a month after the FOIA request at issue was submitted, and that she has no firsthand information about the search conducted pursuant to that request⁴ or to efforts to settle the ensuing litigation. Moreover, as to the one remaining topic of discovery, the transcript reveals that she never met nor spoke to Secretary Clinton about her emails or anything else. She was unaware of the former Secretary’s use of her personal email and never saw any of her emails (*id.* at 38.) While she briefed certain State Department employees about recordkeeping, she could not recall which staffers from the Secretary’s office attended those briefings (*id.* at 42–46, 70–72).

The speculative opinions Ms. Thian offered in her deposition are not based on firsthand knowledge. In point of fact, she submitted her own FOIA request “to know what the Secretary was briefed on before she came to the department” (*id.* at 61–62). In addition to her FOIA request,

⁴ Ms. Thian was asked about Ms. Cheryl Mills’ testimony that she had never received FOIA training while at the State Department, and she replied: “I wasn’t in charge of the FOIA program. I’m not aware.” Ex. B at 83.

she had read about “you know, the OIG investigations and the FBI investigations” (*id.* at 129). When asked whether Secretary Clinton and her staff intentionally withheld from her information “in violation of FOIA,” she replied, apparently based on her outside research, “[i]t appears that way to me” (*id.* at 165). While Judicial Watch attempts to make much of a December 24, 2010 email among State Department personnel, in which one says that the Secretary “guards [her personal e-mail address] pretty closely,” Response at 8, Ms. Thian admitted that she had never previously seen that email (Ex. B at 166), and she could not identify a single one of the six officials who received this email (*id.* at 170).⁵ Her speculations about the former Secretary’s email practices thus come not from her personal knowledge but primarily from the news media, her FOIA request response, and reading depositions in this case (*id.* at 185).

CONCLUSION

Secretary Clinton respectfully requests that this Court deny Judicial Watch’s request for a deposition or any further discovery. If the Court orders any discovery from Secretary Clinton, Secretary Clinton respectfully submits that it be in the form of interrogatories only.

⁵ Judicial Watch claims that this email undermines Secretary Clinton’s assertion that “everyone at State knew she had a private email address because it was displayed to anyone with whom she exchanged emails.” Response at 7. The email actually corroborates, rather than undermines, that assertion. In the email, the Assistant Secretary of State for Public Affairs, Philip Crowley, emails Secretary Clinton and copies a number of high-level State Department officials, all of whom could see Secretary Clinton’s email address. Response, Ex. D. These officials include the State Department’s Legal Advisor (Harold Koh), the Undersecretary for Management (Patrick Kennedy), the Undersecretary for Political Affairs (William Burns), the Undersecretary for Public Diplomacy (Judith McHale), and the Deputy Secretary of State (James Steinberg), among others.

Respectfully submitted,

/s/David E. Kendall

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Counsel for Intervenor Hillary Rodham Clinton

October 10, 2019

CERTIFICATE OF SERVICE

I, David E. Kendall, counsel for Intervenor Hillary Rodham Clinton, certify that, on October 10, 2019, a copy of this Reply was filed via the Court's electronic filing system, and served via that system upon all parties required to be served.

/s/ David E. Kendall
David E. Kendall

EXHIBIT A

From: Shapiro, Elizabeth (CIV) <Elizabeth.Shapiro@usdoj.gov>
Sent: Thursday, August 15, 2019 9:33 AM
To: Kendall, David <DKendall@wc.com>
Subject: Judicial Watch, Inc. v. Dep't of State, Case No. 14-1242

From: Ramona Cotca <rcotca@JUDICIALWATCH.ORG>
Date: August 13, 2019 at 7:12:59 PM EDT
To: "robert.prince@usdoj.gov" <robert.prince@usdoj.gov>, "Pezzi, Stephen (CIV)" <Stephen.Pezzi@usdoj.gov>
Cc: Lauren Burke <lburke@JUDICIALWATCH.ORG>
Subject: Judicial Watch, Inc. v. Dep't of State, Case No. 14-1242

Rob and Stephen -

In light of Judge Lamberth's order from last week, I am writing to confer about the additional discovery Plaintiff requests.

Plaintiff seeks the depositions of the following individuals:

- The three State Department officials identified by Bryan Pagliano in the FBI's 302: Tom Lawrence, Kevin Wagganer and Charles Wisecarver. We believe Kevin Wagganer's name is misspelled in Rob's June 11, 2019 letter as "Kevin Wagner." Per the State Department's Organizational Director, Kevin Wagganer was Deputy Director under John Bentel for S/ES-IRM in February 2009. Kevin Wagganer also appears in other email correspondence with Mr. Bentell and Justin Cooper about telecommunication installation at Secretary Clinton's residence in February 2009. We could not find anything on Kevin "Wagner" as spelled in Rob's letter. Please confirm the correct spelling of Kevin Wagganer. Plaintiff requests their depositions in regards to all three prongs of discovery permitted by the Court in its January 15, 2019 Order: discovery into Secretary Clinton's private email use and discovery into the State Department's settlement, and to the extent they have knowledge about pst files searched in this case, discovery into the adequacy of the State Department's search.
- Eric Stein, current Director of Office of Policy and Programs, IPS. According to previous testimonies, Mr. Stein worked closely with Margaret P. Grafeld, Deputy Assistant Secretary for Global Information Services in the Bureau of Administration. Plaintiff seeks Mr. Stein's

deposition in regards to all three prongs of the discovery permitted by the Court in its January 15, 2019 Order. Based on our research, we believe that Margaret P. Grafeld has since passed away. Please confirm whether this is correct.

- Tasha Thien, Agency Records Officer Manager, IPS. According to depositions already taken, Ms. Thien was tasked with “investigating” Secretary Clinton’s emails use in 2013 and she was involved in the records review for Secretary Clinton and her staff. Plaintiff seeks Ms. Thien’s deposition in regards to all three prongs of the discovery permitted by the Court in its January 15, 2019 Order.
- James Bair, Attorney, Office of Legal Advisor. According to depositions already taken, Mr. Bair is the attorney who has been assigned to handle this litigation. He was also involved in the review and/or production of Secretary Clinton’s emails to the Benghazi Select Committee in August 2014. Plaintiff seeks Mr. Bair’s deposition in regards to all three prongs of the discovery permitted by the Court in its January 15, 2019 Order.
- Patrick Scholl, Chief, Office of Policy and Programs, IPS. According to the deposition testimony of John Hackett, Mr. Scholl sent the directive to IPS in 2013 that “No Records Located” responses should not be sent in response to Secretary Clinton’s emails while Mr. Hackett and IPS “came to ground about what was known about the former Secretary’s emailing habits.” *See* John Francis Hackett Deposition, p. 32. Plaintiff seeks Mr. Scholl’s deposition in regards to all three prongs of the discovery permitted by the Court in its January 15, 2019 Order.
- Hillary Rodham Clinton, former Secretary of State. Plaintiff seeks Secretary Clinton’s deposition in regards to the first prong of the discovery permitted by the Court in its January 15, 2019 Order and FOIA processing in her office from Jan. 2009 to Jan. 2013.
- Cheryl D. Mills, former Chief of Staff for Secretary Clinton. Ms. Mill’s deposition would not be duplicative of her deposition in *Judicial Watch, Inc. v. Dep’t of State*, 13-cv-1363-EGS, because Plaintiff did not have the FBI’s 302 notes when it took Ms. Mills’ deposition, specifically in connection with the conversation Mr. Pagliano discussed with the FBI about other officials’ concerns regarding federal records retention of emails from Secretary Clinton’s private email server. Plaintiff also did not have the additional records related to the CREW request and was not able to ask specific questions about these matters. Plaintiff seeks Ms. Mills’ deposition in regards to all three prongs of the discovery permitted by the Court in its January 15, 2019 Order.

Plaintiff also requests the following documents:

- The email directive sent by IPS or Patrick Scholl or any other State Department official in regards to “No Records Located” responses in connection with FOIA requests related to Secretary Clinton’s emails, and referenced by John Hackett during his deposition. *See* Hackett Deposition, p. 32.
- The email discussing Secretary Clinton’s email address, which was located in connection with the Gawker FOIA request, and referenced by John Hackett during his deposition. *See* John Francis Hackett Deposition, pp. 59-60, 86.
- Unredacted copy of the email chain with Secretary Clinton, Cheryl Mills, Jacob Sullivan and Philippe Reins dated September 29, 2012, with Subject Line: “Key Points.” The State Department produced the redacted version on April 18, 2016 as State Document Number C05831334. There is evidence that part of this email chain was located during the pst searches

conducted by State Department officials in September 2014. See Jan. OIG Report, pp. 15-16, also available online at: <https://www.stateoig.gov/system/files/esp-16-01.pdf>.

Plaintiff also requests the following interrogatories:

- Identification of the witness whose interview notes are reflected in the FBI's 302 notes, marked as Exhibit 21 during Mr. Hackett's deposition. Mr. Hackett identified Eric Stein as the interviewed. To the extent Eric Stein does not identify the names of the Attorney in the Office of the Legal Advisor and pst files referenced in the third full paragraph on the first page of the FBI's 302 notes of Mr. Stein's interview, as identified by Mr. Hackett during his deposition and marked as Exhibit 21, Plaintiff requests that the State Department identity the attorney and pst file referred therein.
- Interrogatories to DOJ Attorney Rob Prince as to when he first had knowledge that the State Department was requesting emails from Secretary Clinton, when he was first aware that Secretary Clinton would return emails to the State Department and when he was first aware that Secretary Clinton had returned emails to the State Department.

Please let us know your client's position as to the discovery requested or if you wish to discuss or have any questions.

Thank you,

Ramona R. Cotca
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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,

Plaintiff, :

v. : Case No.

U.S. DEPARTMENT OF STATE, : 14-cv-1242 (RCL)

Defendant. : :

Videotaped Deposition of TASHA MARIE THIAN

Washington, DC

Thursday, September 19, 2019

10:17 a.m.

Job No.: 262167

Pages 1 - 216

Reported by: Debra A. Whitehead

Transcript of Tasha Marie Thian
Conducted on September 19, 2019

2

1 Videotaped Deposition of TASHA MARIE THIAN,
2 held at the offices of:

3
4 PLANET DEPOS - DC

5 1100 Connecticut Avenue, NW

6 Suite 950

7 Washington, DC 20036

8 (888) 433-3767

9
10
11
12
13 Pursuant to notice, before Debra A. Whitehead,
14 an Approved Reporter of the United States District
15 Court and Notary Public of the District of Columbia.

Transcript of Tasha Marie Thian
Conducted on September 19, 2019

3

1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFF:

3 RAMONA COTCA, ESQUIRE

4 LAUREN M. BURKE, ESQUIRE

5 PAUL J. ORFANEDES, ESQUIRE

6 JUDICIAL WATCH, INC.

7 425 Third Street, SW

8 Suite 800

9 Washington, DC 20024

10 (202) 646-5172

11

12 ON BEHALF OF DEFENDANT AND THE WITNESS:

13 JOSHUA E. GARDNER, ESQUIRE

14 STEPHEN M. PEZZI, ESQUIRE

15 U.S. DEPARTMENT OF JUSTICE

16 FEDERAL PROGRAMS BRANCH

17 1100 L Street, NW

18 Washington, DC 20005

19 (202) 305-7583

20

21

22

Transcript of Tasha Marie Thian
Conducted on September 19, 2019

4

1 A P P E A R A N C E S C O N T I N U E D

2 ON BEHALF OF DEFENDANT:

3 MICHAEL LIEBERMAN, ESQUIRE

4 UNITED STATES DEPARTMENT OF STATE

5 2201 C Street, NW

6 Washington, DC 20520

7 (202) 647-6371

8

9

10 ALSO PRESENT:

11 JEREMY DINEEN, Video Specialist

12

13

14

15

16

17

18

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20

21

22

Transcript of Tasha Marie Thian
Conducted on September 19, 2019

13

1 A At the San Francisco passport agency. 10:22:12
2 Q Okay. 10:22:14
3 A Transferred to Washington in 1986. I 10:22:15
4 left and worked with the Department of Justice as 10:22:20
5 a paralegal specialist for two years, in 1988 to 10:22:23
6 '90. I then returned to the State Department in 10:22:28
7 1990. And I was there at the State Department 10:22:32
8 until June of 2014. I left and went to the 10:22:36
9 National Archives, where -- where I retired in 10:22:43
10 June of 2016. 10:22:50
11 Q Okay. 10:22:52
12 A I had a variety of positions that I held, 10:22:52
13 but most notably I was the records officer of the 10:22:56
14 Department of State from 20 -- or 2007 until 2014. 10:23:00
15 Q Okay. 10:23:05
16 A June of 2014. 10:23:10
17 Q Okay. I want to get to that. Just very 10:23:11
18 briefly, when you went over to National Archives, 10:23:14
19 what was your position there? 10:23:16
20 A It was a similar position that I had at 10:23:17
21 the State Department. It was titled the Director 10:23:18
22 of Corporate Records Management. And it was the 10:23:21

Transcript of Tasha Marie Thian
Conducted on September 19, 2019

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1 e-mail use? 10:49:15

2 A Not with Ms. Grafeld's question. 10:49:16

3 Q What did you do it with? 10:49:20

4 A It was -- we believed that she did not 10:49:24

5 use e-mail. So when we would have conversations 10:49:26

6 with the I -- the IT group, the IRM group, we had 10:49:29

7 a different process going on for department -- 10:49:34

8 senior officials. I called it the Kennedy memo 10:49:39

9 procedures. 10:49:43

10 And, you know, in those discussions we -- 10:49:44

11 I would have expressed that, you know, about the 10:49:47

12 e-mail, whether she had e-mail, and how we were 10:49:50

13 managing the senior accounts. 10:49:54

14 So it was my assumption that -- that 10:49:59

15 the -- that she had a gatekeeper, or gatekeepers, 10:50:02

16 that would get information to her. So we had 10:50:07

17 these conversations. 10:50:11

18 Q Okay. 10:50:11

19 A Yes. 10:50:12

20 Q And I just want to parse this out a 10:50:12

21 little bit. 10:50:15

22 What are the -- okay. So first of all, 10:50:15

Transcript of Tasha Marie Thian
Conducted on September 19, 2019

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1 to Secretary Clinton and her staff -- 10:53:32

2 MR. GARDNER: Objection. Form. 10:53:36

3 Q -- when they came on board? 10:53:40

4 MR. GARDNER: Same objection. 10:53:42

5 A I don't -- I don't know. 10:53:42

6 Q Okay. When Secretary -- in 2009, during 10:53:45

7 Secretary Clinton's transition to the State 10:53:51

8 Department, are you -- do you have any knowledge 10:53:56

9 or did you partake in any discussions with 10:53:58

10 Secretary Clinton or any representatives of 10:54:01

11 Secretary Clinton with respect to any record 10:54:04

12 management? 10:54:07

13 A Yes. And prior to her tenure? 10:54:09

14 Q Yes. 10:54:11

15 A Yes. 10:54:11

16 Q Okay. When was that? 10:54:12

17 A It would have had to have been either 10:54:15

18 late December 2008 or early January 2009. 10:54:17

19 Q Okay. And who did you -- who was -- who 10:54:21

20 partook in the conversation you had? 10:54:25

21 A Okay. She sent a representative, it 10:54:26

22 was -- it was a young man. I don't remember his 10:54:30

Transcript of Tasha Marie Thian
Conducted on September 19, 2019

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1 name. We did have a -- an attorney from the legal 10:54:32
2 office. I believe it was Jeremy Freeman, but I'm 10:54:38
3 not absolutely certain; they rotated frequently. 10:54:44
4 And Clarence Finney. 10:54:48
5 Q Okay. The representative for Secretary 10:54:53
6 Clinton, the young man, did he come -- become -- 10:55:02
7 was he hired on at the State Department? 10:55:05
8 A I don't know. 10:55:08
9 Q Did you ever see him at the State 10:55:09
10 Department after this meeting? 10:55:11
11 A I don't remember seeing him again. 10:55:13
12 Q Okay. You don't recall his name? 10:55:14
13 A No. 10:55:19
14 Q Do you remember if he was an attorney for 10:55:19
15 Secretary Clinton? 10:55:21
16 A I don't know. 10:55:24
17 Q Okay. And what were the -- what were the 10:55:25
18 discussions during that meeting with respect to 10:55:33
19 records management? 10:55:36
20 A That the Secretary wanted -- or the 10:55:38
21 incoming Secretary wanted to bring with her 10:55:40
22 materials, personal papers, which were copies of 10:55:44

Transcript of Tasha Marie Thian
Conducted on September 19, 2019

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1 material from her time as the First Lady, as well 10:55:48
2 as her time as a Senator, and -- and some other -- 10:55:52
3 you know, some other material, like contacts. 10:55:56
4 So she wanted to bring those with her, 10:55:59
5 and that she was -- she knew that we had a 10:56:01
6 process, and she wanted to make sure that she 10:56:07
7 could take them with her when she left the 10:56:10
8 department. 10:56:13
9 Q And what was -- and what part of the 10:56:14
10 process was discussed at that point? 10:56:20
11 MR. GARDNER: Objection. Form. 10:56:23
12 A We did inform the young man what the 10:56:26
13 process was, the departing officials procedures. 10:56:30
14 I believe we gave him the departing officials 10:56:35
15 notice, the department notice. And I believe we 10:56:39
16 gave him the government briefing booklet. 10:56:41
17 We either did that or we mailed it to 10:56:45
18 him. 10:56:47
19 Q Okay. The first one you said, I think 10:56:48
20 you said the departing officials procedures? 10:56:53
21 A Yes. 10:56:56
22 Q Did you discuss -- or did the departing 10:56:56

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1 officials procedures or the government briefing 10:57:07
2 booklet, did they cover e-mail use? 10:57:10
3 MR. GARDNER: Objection. Form. 10:57:13
4 A Yes, it does. 10:57:14
5 Q And was -- was whether Secretary Clinton 10:57:14
6 would use e-mail covered at the meeting? 10:57:20
7 A No. 10:57:22
8 Q Was there any discussion about the State 10:57:22
9 Department's policy with respect to e-mails -- 10:57:28
10 A No. 10:57:31
11 Q -- at that meeting? 10:57:31
12 A Not at that meeting, no. 10:57:32
13 Q Okay. So what was covered at the meeting 10:57:34
14 with respect to the records that Secretary Clinton 10:57:40
15 wanted to bring at the State Department? 10:57:44
16 A It was very specific to what she wanted 10:57:45
17 to bring with her. We went over the process, what 10:57:47
18 the requirements were. And then we informed them. 10:57:52
19 I don't know if we waited to inform them, I can't 10:57:58
20 remember that. But we informed them that we 10:58:01
21 wanted a -- a letter or a memo describing what the 10:58:03
22 material was, and that the material was to be kept 10:58:07

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1 separate from State Department records. 10:58:10

2 Q Why was the material to be kept separate 10:58:17

3 from State Department records? 10:58:19

4 A So that it did -- so that it didn't get 10:58:21

5 intermixed with State Department records. 10:58:24

6 Q And that was explained to Secretary 10:58:26

7 Clinton's representative at that meeting? 10:58:30

8 A Yes. 10:58:31

9 Q Is that the only meeting that you had 10:58:31

10 with respect to records management during the 10:58:47

11 transition period for Secretary Clinton? 10:58:49

12 A Yes. 10:58:52

13 Q Okay. And were there any other times 10:58:52

14 that you inquired or had discussions with respect 10:59:00

15 to Secretary Clinton's e-mails? 10:59:02

16 Do you understand my question? 10:59:10

17 A No, I -- I don't really. 10:59:11

18 MR. GARDNER: I don't, either. 10:59:13

19 A It's really broad. 10:59:14

20 Q Again going back to your earlier 10:59:15

21 testimony that you were repeatedly told that 10:59:19

22 Secretary Clinton didn't use e-mail -- 10:59:21

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1 legal department, that he was also provided a 11:17:20
2 client support manual? 11:17:25

3 A Oh. 11:17:28

4 Q What is a client support manual? 11:17:28

5 A Oh, okay. That was maybe not at that 11:17:30
6 meeting. But the -- the Secretary's office, I got 11:17:32
7 this through a FOIA. So I -- I did not have that 11:17:38
8 knowledge beforehand. And -- 11:17:42

9 MR. GARDNER: So objection. Lack of 11:17:45
10 foundation. 11:17:46

11 A Yeah. 11:17:48

12 Q Okay. What is the client support manual? 11:17:48

13 A It was a manual, I believe from S-IRM, of 11:17:52
14 how things are operating within the Secretary's 11:17:59
15 office. 11:18:02

16 Q And when was that manual provided to the 11:18:06
17 Secretary's office? 11:18:08

18 A I don't know. 11:18:09

19 MR. GARDNER: Objection. Lack of 11:18:10
20 foundation. 11:18:11

21 A I don't know. Like I said, I received it 11:18:12
22 from a -- the only FOIA response I received. 11:18:14

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1 Q So you submitted a FOIA request to the 11:18:18
2 State Department? 11:18:22

3 A Yes. I wanted to know what the Secretary 11:18:23
4 was briefed on before she came to the department. 11:18:25

5 Q And other than the client support manual, 11:18:31
6 what response, what else was she briefed on, 11:18:34
7 according to the response you got from the State 11:18:38
8 Department -- 11:18:41

9 MR. GARDNER: Objection. 11:18:41

10 Q -- through the FOIA request? 11:18:41

11 MR. GARDNER: Objection. Lack of 11:18:43
12 foundation. 11:18:44

13 A It was those two documents that I cited. 11:18:44

14 Q Okay. The government briefing book and 11:18:47
15 the client support manual? 11:18:51

16 MR. GARDNER: Same objections. 11:18:52

17 A Well, there would be three -- 11:18:54

18 Q Okay. 11:18:56

19 A -- essentially. 11:18:57

20 The -- it's the client -- I guess the 11:18:58
21 client support manual, and there was another 11:19:00
22 document. It was kind of a brief -- I believe it 11:19:03

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1 A Exceptions, sorry. 11:51:06

2 Q And to make sure I understand what you're 11:51:07

3 saying, the systems, though, that fell under the 11:51:09

4 exceptions, though, they were State Department 11:51:12

5 approved or National Archives approved systems. 11:51:14

6 Is that right? 11:51:17

7 A Right. 11:51:17

8 Q Okay. 11:51:18

9 A Right. 11:51:19

10 Q I'm sorry? 11:51:20

11 A That's right. And as would eventually be 11:51:21

12 the Electronic Records Center, the ERSC. 11:51:23

13 Q Okay. And did a representative from 11:51:28

14 Secretary Clinton's office attend these meetings 11:51:48

15 from 2008 to 2012? 11:51:51

16 A I always believed there was somebody from 11:51:55

17 her office. 11:51:57

18 Q Do you know who was the representative 11:51:58

19 from her office? 11:52:00

20 A I don't know. 11:52:02

21 Q Okay. Do you know, did you ever see or 11:52:02

22 do you know of any of her senior staff who 11:52:06

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1 attended any of these meetings? 11:52:09

2 A I was told one time that Huma Abedin was 11:52:11

3 to attend. This is from Clarence Finney. 11:52:16

4 In that session, a person that looked 11:52:22

5 like her was there. I can't swear it was her. 11:52:24

6 Q Did you ever see Cheryl Mills attend any 11:52:29

7 of these meetings? 11:52:35

8 MR. GARDNER: Objection. Lack of 11:52:36

9 foundation. 11:52:37

10 MS. COTCA: I mean, she was at the 11:52:42

11 meeting. So I'm asking -- 11:52:43

12 MR. GARDNER: You assume she knows what 11:52:44

13 Cheryl Mills looks like. 11:52:47

14 A I don't -- 11:52:49

15 Q Do you know who Cheryl Mills is? 11:52:49

16 A I do now. 11:52:51

17 Q Okay. Do you know what she looks like? 11:52:51

18 A I don't think I knew what she looked like 11:52:51

19 then. 11:52:51

20 Q Okay. But do you know now what she looks 11:52:52

21 like? 11:52:53

22 A I know now what she looks like. 11:52:54

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1 Q Okay. So as sitting here today, do you 11:52:56
2 know if -- did you ever see Ms. Mills attend any 11:52:58
3 of those meetings? 11:53:00
4 A I -- I can't remember, though. 11:53:03
5 Q Okay. And how many people -- how well 11:53:04
6 were these meetings attended? 11:53:11
7 A They -- 11:53:14
8 MR. GARDNER: Objection to form. 11:53:15
9 A They seemed to be well attended. I mean, 11:53:16
10 maybe up to 40 people. 11:53:19
11 Q And how long was the workshop? 11:53:20
12 A It was an hour. 11:53:21
13 Q Okay. And were there any materials that 11:53:22
14 were provided? 11:53:27
15 A Yes. 11:53:27
16 Q Okay. What were they? 11:53:27
17 A The government briefing booklet was 11:53:29
18 usually part of the -- the package. The -- the 11:53:31
19 slide deck that I presented was in there, as well 11:53:38
20 as the relevant record schedules per whichever 11:53:44
21 unit their area. 11:53:49
22 So Clarence would put together the 11:53:51

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1 A Yes. 12:05:22

2 Q Okay. Cheryl Mills has previously 12:05:22

3 testified in a different case that she never 12:05:39

4 received training regarding FOIA at the State 12:05:41

5 Department. 12:05:44

6 Is that true, as far as you know? 12:05:45

7 A I wasn't in charge of the FOIA program. 12:05:48

8 I'm not aware. 12:05:50

9 Q Okay. Do you know if anybody on behalf 12:05:52

10 of Ms. Mills attended these workshops? 12:05:56

11 A I don't know. 12:06:00

12 Q Okay. Do you expect that somebody would 12:06:00

13 have attended the workshop on behalf of Ms. Mills 12:06:03

14 as the counselor and the chief of staff to 12:06:06

15 Secretary Clinton? 12:06:08

16 A Yes. 12:06:10

17 Q Okay. During the workshop, was there a 12:06:10

18 discussion with respect to the need to retain 12:06:25

19 records, including e-mails, for purposes of the 12:06:28

20 State Department's obligations under FOIA? 12:06:32

21 A I believe that one of my slides had a -- 12:06:36

22 had a notation about FOIA. 12:06:38

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1 Q That's the executive order from 2009? 14:15:00

2 A The first day that -- the first full day 14:15:04

3 of President Obama's administration. Various 14:15:07

4 other information. And -- and of course I -- you 14:15:13

5 know, I've read, you know, the OIG investigations 14:15:20

6 and the FBI investigations. 14:15:24

7 Q Okay. 14:15:26

8 A Yes. 14:15:27

9 Q And I -- I have some questions for you 14:15:28

10 about that. 14:15:30

11 With respect to the OIG's investigation, 14:15:30

12 did the OIG -- and just for clarity, for the 14:15:32

13 record, what's the OIG? 14:15:36

14 A Office of the Inspector General, from the 14:15:39

15 State Department. 14:15:41

16 Q Okay. And when you talking about the -- 14:15:42

17 which investigation by the State Inspector General 14:15:47

18 are you referring to that you reviewed? 14:15:51

19 A They have an interesting title for it, 14:15:58

20 but it was really looking at the handling by 14:15:59

21 Secretary Clinton of e-mails. I think they 14:16:02

22 included other Secretaries of State. I'm not sure 14:16:06

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1 Q Okay. Why do you -- why do you think you 15:09:10
2 were lied to about Secretary Clinton's e-mail use? 15:09:16
3 A I think it would be because we wouldn't 15:09:23
4 let her have the system at all. She wouldn't be 15:09:25
5 able to use e-mail in such a -- in such a way as a 15:09:29
6 personal server and that type of thing. 15:09:34
7 Q Her e-mail server would not have been 15:09:37
8 approved. Is that -- is that what you're saying? 15:09:39
9 A Correct. And we would have to have the 15:09:41
10 records. Yes. 15:09:43
11 Q Do you -- do you believe that Secretary 15:09:46
12 Clinton intentionally withheld and her staff 15:10:00
13 intentionally withheld the information so you 15:10:05
14 wouldn't have access to her e-mails? 15:10:07
15 A It appears that way to me. 15:10:10
16 Q That would be in violation of federal 15:10:11
17 records -- federal regulations and State 15:10:27
18 Department policies. Correct? 15:10:30
19 MR. GARDNER: Objection. Form. 15:10:31
20 A Yes. 15:10:32
21 Q Okay. And in violation of FOIA? 15:10:32
22 MR. GARDNER: Objection, form. 15:10:35

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1 Objection, foundation. 15:10:36

2 A Yes. 15:10:41

3 Q One last exhibit. 15:10:41

4 (Thian Deposition Exhibit 8 marked for 15:10:53

5 identification and is attached to the transcript.) 15:11:33

6 Q Ms. Thian, I believe it's been marked as 15:11:33

7 Exhibit 8. Which is an e-mail chain that was 15:11:36

8 produced to us yesterday by the attorneys 15:11:41

9 representing the State Department in this case. 15:11:47

10 Have you seen this document before? 15:11:51

11 A No. 15:11:54

12 Q Okay. In the e-mail chain, it's from 15:11:55

13 December 24, 2010, amongst State Department 15:12:04

14 officials, which include Secretary Clinton's 15:12:10

15 e-mail address. 15:12:18

16 Do you see that? 15:12:18

17 A Yes. 15:12:19

18 Q Okay. And it appears that somebody 15:12:19

19 had -- Michael Posner had forwarded that e-mail 15:12:23

20 that included Secretary Clinton's e-mail address 15:12:29

21 to other State Department officials. Right? 15:12:31

22 MR. GARDNER: Objection. Lack of 15:12:35

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1	A	Yes.	15:15:59
2	Q	Does it surprise you that you were not	15:15:59
3		informed of this?	15:16:03
4	A	Yes.	15:16:04
5		MR. GARDNER: Same objections.	15:16:05
6	Q	Do you know who Daniel Baer is, who is	15:16:10
7		listed in this e-mail?	15:16:13
8	A	No.	15:16:15
9	Q	Okay. How about Michael Posner?	15:16:15
10	A	No.	15:16:17
11	Q	Do you recognize Sarah Labowitz --	15:16:19
12		Labowitz?	15:16:34
13	A	No.	15:16:35
14	Q	How about Jason -- I can't pronounce the	15:16:35
15		last name.	15:16:38
16	A	No.	15:16:40
17	Q	And then how about Courtney Austrian?	15:16:41
18	A	No.	15:16:44
19	Q	Okay. Does seeing this e-mail chain now	15:16:45
20		further make you believe that you were	15:17:04
21		intentionally lied to by Secretary Clinton and her	15:17:12
22		staff with respect to Secretary Clinton's e-mail	15:17:15

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1 provided the criteria they used to review the 15:33:57
2 e-mails prior to returning her e-mails to the 15:34:00
3 State Department? 15:34:03
4 MR. GARDNER: Objection. Form. Lack of 15:34:04
5 foundation. 15:34:05
6 A Absolutely. 15:34:06
7 Q Why? 15:34:07
8 A Because what was the judgment of whether 15:34:11
9 it was a -- a record or not? And now -- and I 15:34:14
10 understand from the FBI, they didn't even read the 15:34:18
11 e-mails. So what -- what was -- what was the 15:34:22
12 criteria? How would they know whether it was a 15:34:26
13 personal e-mail or if it was a real State 15:34:30
14 Department permanent record. 15:34:35
15 Q Are you aware that Mr. Hackett was 15:34:36
16 emphatic, actually, according to his testimony in 15:34:38
17 this case, in his discussion with Patrick Kennedy, 15:34:43
18 that the State Department must request the 15:34:49
19 criteria used from Secretary Clinton? 15:34:51
20 A I -- I believe I did read his deposition. 15:34:54
21 So, yes, I am aware of that now. I didn't know it 15:34:59
22 then. 15:35:02

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ACKNOWLEDGMENT OF DEPONENT

I, TASHA MARIE THIAN, do hereby

acknowledge that I have read and examined the

foregoing testimony, and the same is a true,

correct and complete transcription of the

testimony given by me, and any corrections appear

on the attached Errata sheet signed by me.

(DATE)

(SIGNATURE)

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Debra Ann Whitehead, the officer before whom
3 the foregoing deposition was taken, do hereby
4 certify that the foregoing transcript is a true and
5 correct record of the testimony given; that said
6 testimony was taken by me stenographically and
7 thereafter reduced to typewriting under my
8 direction; that reading and signing was requested;
9 and that I am neither counsel for, related to, nor
10 employed by any of the parties to this case and have
11 no interest, financial or otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my hand and
13 affixed my notarial seal this 19th day of September,
14 2019.

15
16 My commission expires:

17 September 14, 2023



19 -----

20 NOTARY PUBLIC IN AND FOR THE
21 DISTRICT OF COLUMBIA